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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ABRAHAM R., JR., a Person Coming
Under the Juvenile Court Law.

B218654
(Los Angeles County
Super. Ct. No. CK43551)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ABRAHAM R., SR. et al.,

Defendants and Appellants.

APPEALS from a judgment of the Superior Court of Los Angeles County.

Stanley Genser, Juvenile Court Referee. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant Abraham R., Sr.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant Christy R.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, for Plaintiff and Respondent .

Christy R. (Mother) appeals from an order terminating her parental rights to her son Abraham R., Jr. (Abraham). Mother contends that she was not afforded proper notice or an opportunity to be heard at the permanency planning hearing held pursuant to Welfare and Institutions Code section 366.26 (the .26 hearing). Abraham R., Sr. (Father) joins in Mother's appeal. We conclude that Mother received proper notice of the hearing. Mother and Father have no relationship with Abraham; therefore, termination of parental rights is appropriate. We affirm the judgment of the juvenile court.

FACTS

Mother has five older children, born in 1998, 2000, 2002, 2004 and 2007. Two of the children were born with positive toxicological screens for methamphetamines, and one child was born with signs of drug withdrawal. Mother's parental rights were terminated as to four of the children, and one child is in a guardianship with her great grandmother. Mother's history of drug abuse spans almost two decades.

Abraham was born in May 2008. Abraham and Mother had positive toxicology screens for amphetamines. Abraham showed signs of withdrawal from prenatal drug exposure and had to be fed by intubation. The hospital notified the Department of Children and Family Services (DCFS). A social worker interviewed Mother and Father at the hospital. Mother admitted to drug usage during her pregnancy. Father admitted to drug abuse when he was younger, but denied current usage. When the social worker asked further questions to determine whether Abraham could safely be released to Father, Father grabbed his belongings and left, saying that his relationship with Mother was over. DCFS took Abraham into protective custody.

On May 7, 2008, the dependency court found a prima facie case for detaining Abraham, and removed him from parental custody. Mother was authorized to have monitored visitation, and was required to undergo drug counseling and testing. By June 2008, DCFS had lost track of Mother and Father, whose whereabouts were unknown. The social worker noted that Father was in violation of his parole and could be trying to avoid arrest. Also, he has three children whom he does not support financially because he is unemployed.

A jurisdiction hearing was conducted on July 10, 2008. Neither Mother nor Father came to the hearing. The court sustained allegations that: (1) Abraham was born with amphetamines in his bloodstream and suffering from drug withdrawal symptoms, a condition that existed because Mother used illicit drugs and placed the child at risk of serious harm; (2) Mother has a 14-year history of drug use and is a current user of methamphetamine, which renders her incapable of providing regular care: as a result of her drug usage, Mother's parental rights were terminated as to four older children; and (3) Father is unable to provide Abraham with ongoing care and supervision. Father's whereabouts were unknown: Father's sister informed the court that "he lives in the streets." Abraham was declared a dependent of the court. Mother was denied reunification services.

On October 30, 2008, Abraham was placed in the home of Mr. and Mrs. H., who expressed willingness to adopt him. The H.'s—who have two daughters and a son—had an approved home study. In December 2008, DCFS reported that the H. family was "anxious to finalize the adoption process." Since moving to the H. residence, Abraham was noticeably improved: he was trying to crawl, turning over, grabbing items, laughing and eating solid foods. Mother's whereabouts were unknown: her last contact with DCFS was in June 2008. Father was incarcerated with charges pending. Neither parent had visited Abraham.

At a hearing on February 3, 2009, the court noted that Mother's whereabouts "remain unknown." Father had not seen Abraham since birth. Neither parent was in compliance with the case plan. The court terminated services and set the matter for a .26 hearing. Mother was served with notice of the hearing to terminate parental rights, scheduled for May 26, 2009.

Prior to the hearing, DCFS reported that Abraham, age 12 months, is walking without assistance, is developmentally on target, and is saying "papa," "mama," and "dada," among other words. Mr. H. is retired and enjoys being a stay-at-home parent. Mrs. H. works as a teacher. The H.'s refer to Abraham as "our son" and they are committed to providing him with a permanent home through adoption. Mother and

Father have had no contact with Abraham since birth, and neither expressed a desire to see Abraham.

On May 26, 2009, the day set for the .26 hearing, the court learned that Mother is in state prison, in Chowchilla. In addition, Mother had given birth to a new baby, Jerimiah, who was detained and placed under court supervision. A statewide removal order was issued for Mother's appearance in court on June 19, for both Abraham and Jerimiah. Jerimiah was placed in the same home as Abraham, and the plan was to adopt both boys.

On June 8, 2009, Father sent a letter to DCFS saying that he loves Abraham, wants to be part of his life, and was participating in a program to comply with the case plan. Father also sent an affectionate letter to Abraham. Father filed a request for a modification seeking reunification services because he is participating in treatment programs in prison. Mother expected to be incarcerated for two more years. DCFS reported that Abraham is thriving in the H. family home.

On May 29, 2009, notice was sent to Mother at the prison in Chowchilla stating that a hearing would be held on June 19 to terminate her parental rights and implement a plan of adoption. Mother waived her right to appear at the hearing to declare Jerimiah a dependent of the court, which was also scheduled for June 19, and authorized her attorney to appear on her behalf.

On June 19, both Mother and Father requested a contested hearing on the permanent plan for Abraham, and a contested hearing on the adjudication hearing for Jerimiah. Due to the parents' requests for a contested hearing, the matters were continued to July 16. On June 19, 2009, DCFS sent a letter to Mother advising her that the court had continued the hearing for Jerimiah and Abraham until July 16, and requesting her attendance at the hearing. Mother was also sent a notice stating that a hearing would be held on July 16 to terminate her parental rights and implement a plan of adoption. This notice was personally served on Mother on June 29, 2009.

DCFS sent Mother a waiver if she chose not to attend. The record contains a signed waiver from Mother, dated June 25, 2009, giving up her right to attend the hearing

on July 16, and authorizing her attorney to represent her. The only box checked on the waiver form indicates, incorrectly, that it is a hearing to declare Abraham a dependent of the court, not a hearing to terminate parental rights.

On July 16, 2009, the court heard Father's request for a modification. Father testified that during his imprisonment, he has been attending a substance abuse, parenting, life skills and anger management class, since May 2009. He expected to be released from prison in November 2009. Following his release, Father planned to enter a six-month program, remain sober and get a job. Father has not had any contact with Abraham since the child's birth in May 2008: he was afraid of being arrested if he visited Abraham. The court denied Father's motion requesting reunification services because no showing was made that a modification would be in Abraham's best interest.

On the same day, the court conducted the .26 hearing. At the hearing, Mother's attorney requested a continuance, saying that the notice sent to Mother was defective because it "did not indicate that the recommendation was to terminate parental rights." The court asked Mother's attorney, "You set it for [a] contested .26 hearing also. You set it, correct?" Mother's attorney said, "Yes." The court observed that the notice for the June 19 hearing "was previously good. [Mother] set it for contest. There's no notice required" when the matter was continued from June 19 to July 16, in response to Mother's request for a contested hearing.

The court found by clear and convincing evidence that Abraham is adoptable and that adoption would be in his best interest and provide the most permanency. It said, "Mother and Father have not presented any evidence which would show that it would be in the best interest of the child not to terminate parental rights, and, accordingly, I am terminating the parental rights" of Mother and Father. Mother objected to the court's orders.

DISCUSSION

Mother and Father appeal from the juvenile court's order terminating their parental rights to Abraham. On appeal, Mother argues that (1) the court erred by denying her request for a continuance; (2) the court denied her due process right to notice of the

.26 hearing; and (3) the court erred by failing to ensure Mother's appearance at the July 16, 2009, .26 hearing. In his brief, Father raises no substantive issues of his own, but joins in Mother's arguments.

Continuances may be granted "only upon a showing of good cause." (Welf. & Inst. Code, § 352, subd. (a).) As Mother observes in her brief, the Legislature insists that dependency actions "be resolved expeditiously." As a result, continuances of dependency hearings are disfavored, even when the hearing is to terminate parental rights. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811; *In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) The court's denial of a request for a continuance will not be overturned on appeal absent an abuse of discretion. (*In Elijah V.* (2005) 127 Cal.App.4th 576, 585.) "Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.)

Mother maintains that the court had to grant a continuance because she did not receive proper notice of the .26 hearing. The record reveals that Mother did receive notice of the hearing. First, Mother received valid notice of the .26 hearing originally scheduled for May 26, which specifically enumerated that her parental rights may be terminated. Second, she received notice that her parental rights would be terminated on June 19. On June 19, the hearing was continued due to Mother's contest. That very day, DCFS sent Mother a letter advising her that the hearing was continued to July 16. The letter was followed by a formal notice advising Mother that a .26 hearing was scheduled for July 16: the notice listed termination of parental rights and implementation of a plan of adoption as the plan recommended by the social worker. This notice was *personally served* upon Mother who *signed* her name on the proof of service. Mother signed a waiver of her appearance at the July 16 hearing.

In short, Mother received three proper notices of the .26 hearing. There is no factual basis for her claim that she failed to receive notice. As a result, the court did not abuse its discretion by denying Mother's motion for a continuance.

Mother makes a due process argument based on her purported failure to receive notice of the .26 hearing. As discussed in the preceding paragraphs, Mother received proper notice of the May 26, June 19 and the July 16 .26 hearings. In addition, Mother did not establish any other grounds showing “good cause” to continue the hearing. (Welf. & Inst. Code, § 352.) For example, she did not inform the juvenile court that a continuance was warranted because—if she was present at the hearing—she could establish one of the enumerated statutory exceptions that might make termination of parental rights detrimental to Abraham. Indeed, Mother did not make an offer of proof supporting one or more of the statutory exceptions to the termination of parental rights. (See *In re Ninfa S.*, *supra*, 62 Cal.App.3d at p. 811.) Instead, Mother only sought to delay the inevitable, and thereby interfere with Abraham’s right to a permanent placement. The unavoidable fact is that Mother has had seven children, and lost custody of all of them due to her history of drug abuse.

Finally, Mother argues that the court should have ensured her presence at the hearing. Mother expressly waived her right to appear at Jeremiah’s hearing, which was held at the same time as Abraham’s hearing. Nevertheless, Mother contends that she “was effectively denied the ability to appear at Abraham’s permanent plan hearing where she could have provided the trial court with information relevant to the determination of the permanent plan best suited for Abraham.” She does not elucidate in her brief what information she could have given to the court.

There is no reason to believe that Mother could have provided any information relevant to the juvenile court’s determination. There is nothing Mother could say at the .26 hearing that would have altered the outcome. The parental contact exception to termination of parental rights clearly does not apply: Mother disappeared after Abraham’s birth, did not stay in touch with DCFS, did not advocate for Abraham’s placement with a relative, and did not visit Abraham. Mother made no effort to rehabilitate herself by participating in drug testing and in a drug rehabilitation program, in order to alleviate the circumstances that led to the dependency case. Mother makes no claim that Abraham will not be adopted, nor does she claim that it would be detrimental

to Abraham if her parental rights were terminated. Placing Abraham in Mother's care is impossible, because Mother is incarcerated. The evidence shows that Abraham is bonded with the H. family.

If there was any error in giving Mother notice of the hearing, or in obtaining a waiver from her, or in failing to ensure her appearance, that error was harmless. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624-626.) No other result was possible, even if Mother had been present. (*Id.* at p. 626.) The legislative preference is for adoption, and Mother could not overcome this presumption by appearing at the hearing.

In his brief, Father argues only that if Mother's appeal is successful, the order terminating his parental rights must be reversed. Mother's appeal cannot succeed. Accordingly, the order terminating the parental rights of Mother and Father must be affirmed.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.